

(2019) 02 SC CK 0101

Supreme Court Of India

Case No: Criminal Appeal No. 1175 Of 2014

Raju

APPELLANT

Vs

State Of Haryana

RESPONDENT

Date of Decision: Feb. 22, 2019

Acts Referred:

- Indian Penal Code, 1860 - Section 376(2)(g)
- Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 2(1), 2(k), 7A, 15(1)(g), 20
- Juvenile Justice (Care and Protection of Children) Rules, 2007 - Rule 12, 12(3), 12(3)(a)(i), 12(3)(a)(ii), 12(3)(a)(iii)

Citation: AIR 2019 SC 1136 : (2019) 3 JT 121 : (2019) 4 Scale 398 : (2019) CriLJ 1793 : (2019) 3 Cricc 410 : (2019) 4 SCR 18 : (2019) 14 SCC 401 : (2019) 1 ALD(Cri) 711 : (2019) 1 ALT(Cri) 285 : (2019) CriLJ 1793 : (2019) 2 JCC 1661 : (2019) 1 JKJ 109 : (2019) 2 JL

Hon'ble Judges: N.V. Ramana, J; Mohan M. Shantanagoudar, J; Indira Banerjee, J

Bench: Full Bench

Advocate: Siddhartha Dave, Jemtiben, S. Udaya Kumar Sagar, Monika Gusain

Final Decision: Allowed

Judgement

,,,,

Mohan M. Shantanagoudar, J",,,,,

1. This appeal is directed against the final judgment and order dated 24.08.2011 passed by the High Court of Punjab and Haryana at Chandigarh in,,,,

Criminal Appeal No. 1830ÂSB of 2003, by which the High Court dismissed the appeal filed by the Appellant herein challenging the judgment of",,,,,

conviction under Section 376(2)(g) of the Indian Penal Code (IPC) dated 08.11.2002 and order of sentence dated 11.11.2002 rendered by the,,,,,

Additional Sessions Judge, Gurgaon, in Sessions Case No. 5/2001." ,,,,

2. The brief facts leading to the instant appeal are that an FIR was lodged against the Appellant Raju s/o Rajendar Singh, and two other persons, viz." ,,,,

Raju s/o Bhim and Raja @ Raj Kumar s/o Makhsi, alleging that the three persons had intercepted the prosecutrix when she was passing by some" ,,,,

fields along with her one-year-old brother and had taken her to a field nearby, whereupon Raju s/o Bhim and Raja @ Raj Kumar s/o Makhsi" ,,,,

engaged in the gang-rape of the prosecutrix, while the Appellant stood outside the field. The prosecutrix was aged fifteen years at the time of the" ,,,,

incident, which occurred on 14.09.2000. The three accused were convicted for the offence punishable under Section 376(2)(g) of the IPC, and" ,,,,

sentenced to 10 years' rigorous imprisonment and a fine of Rs. 500/â, and further two months' rigorous imprisonment in default of payment" ,,,,

of fine. Aggrieved by the same, the three accused appealed to the High Court." ,,,,

3. The Appellant, inter alia, raised the defence before the High Court that he was aged less than 18 years at the time of commission of the offence," ,,,,

i.e. 14.09.2000, and hence was entitled to the benefit of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short," ,,,,

the 2000 Act). The High Court, however, rejected such contention and affirmed the conviction of the three accused, including the Appellant." ,,,,

4. Aggrieved by the above judgment, the Appellant filed the instant appeal, inter alia raising the plea of juvenility again. The Appellant relied upon a" ,,,,

transfer certificate issued in his favour by the Dayanand Middle School, Sohna, Gurgaon which showed his date of birth to be 12.07.1984. He also" ,,,,

relied upon a certificate issued by the Government Senior Secondary School (Boys), Sohna which showed his date of birth to be the same. It was" ,,,,

submitted by the Appellant before this Court that the certificates in question prima facie entitled him to claim the conduct of an inquiry in terms of" ,,,,

Section 7A of the 2000 Act. The Appellant referred to the decisions of this Court in Murari Thakur v. State of Bihar, (2009) 16 SCC 256, Dharambir" ,,,,

v. State (NCT of Delhi), (2010) 5 SCC 344, and Jitendra Singh @ Babboo Singh v. State of U.P., (2010) 13 SCC 523." ,,,,

5. Keeping in mind such circumstances and the certificates relied upon, this Court vide order dated 09.08.2012 directed the Registrar (Judicial) of this" ,,,,

Court to conduct an inquiry in respect of the age of the Appellant in terms of Section 7A of the 2000 Act read with the rules framed thereunder, and",,,,,

to submit a report to this Court within four months from the order.,,,,,

6. This Court received such report on 07.01.2013, which determined that the age of the Appellant was 16 years, 2 months and 2 days at the time of",,,,,

commission of the offence and that he was thus a juvenile at that time. Thereafter, arguments were heard and judgement reserved. However,",,,,

subsequently, the State raised the argument that the Court had not looked into the question of whether the plea of juvenility as decided by the Registry",,,,,

of this Court should be given precedence over the view of the High Court. By an order dated 25.04.2014, this Court directed that the appeal be heard",,,,,

further. Shri Siddhartha Dave was subsequently appointed as amicus curiae to assist the Court.,,,,,

7. It was submitted by the learned amicus curiae that the learned Registrar (Judicial) of this Court had, after duly calling for records and appreciating",,,,,

the material adduced, reached the conclusion that the Appellant was a juvenile at the time of commission of the offence, and there was no reason to",,,,,

deny the Appellant the benefit of such finding. Moreover, he submitted that seeing that it was upon the direction of this Court that the learned",,,,,

Registrar had conducted the inquiry under Section 7A of the 2000 Act and the rules framed thereunder, and had submitted his report to this Court",,,,,

after conducting such inquiry in accordance with law, the report may be treated as having been made by this Court itself.",,,,,

8. Heard the learned amicus curiae and advocate for the State, and perused the material on record.",,,,,

9. It is by now wellÂsettled, as was held in Hari Ram v. State of Rajasthan, (2009) 13 SCC 211, that in light of Sections 2(k), 2(l), 7A read with",,,,,

Section 20 of the 2000 Act as amended in 2006, a juvenile who had not completed eighteen years on the date of commission of the offence is entitled",,,,,

to the benefit of the 2000 Act (also see Mohan Mali v. State of Madhya Pradesh, (2010) 6 SCC 669; Daya Nand v. State of Haryana, (2011) 2 SCC",,,,,

224; Dharambir v. State (NCT) of Delhi (supra);J itendra Singh @ Babboo Singh v. State of Uttar Pradesh, (2013) 11 SCC 193.) It is equally wellÂ-",,,,,

settled that the claim of juvenility can be raised at any stage before any Court by an accused, including this Court, even after the final disposal of a",,,,,

case, in terms of Section 7A of the 2000 Act (see Dharambir v. State (NCT) of Delhi, (supra),A buzar Hossain v. State of West Bengal, (2012) 10",,,,,

SCC 489; Jitendra Singh @ Babboo Singh v. State of UP, (supra); Abdul Razzaq v. State of Uttar Pradesh, (2015) 15 SCC 637).",,,,,

10. In light of the above legal position, it is evident that the Appellant would be entitled to the benefit of the 2000 Act if his age is determined to be",,,,,

below 18 years on the date of commission of the offence. Moreover, it would be irrelevant that the plea of juvenility was not raised before the Trial",,,,,

Court, in light of Section 7A. As per the report of the inquiry conducted by the Registrar (Judicial) of this Court, in this case, the Appellant was below",,,,,

18 years of age on the date of commission of the offence. The only question before us that needs to be determined is whether such report may be",,,,,

given precedence over the contrary view taken by the High Court, so that the benefit of the 2000 Act may be given to the Appellant.",,,,,

11. Before proceeding further, it would be useful to refer to Section 7A of the 2000 Act and Rule 12 of the Juvenile Justice (Care and Protection of",,,,,

Children) Rules, 2007 (in short, "the 2007 Rules"), which deal with the making of an inquiry by the Court in case of a claim of juvenility. Section",,,,,

7A of the 2000 Act is as follows:,,,,,

"7A. Procedure to be followed when claim of juvenility is raised before any court"

(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of",,,,,

commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age",,,,,

of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:",,,,,

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and",,,,,

such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so",,,,,

on or before the date of commencement of this Act.,,,,,

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-[^]section,,,,,

(1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no" ,,,,

effect.â€",,,,

(emphasis supplied),,,,

12. Sub-[^]rule (3) of Rule 12 of the 2007 Rules states the following regarding the procedure to be followed for age determination:,,,,

â€œIn every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as" ,,,,

the case[^] may be, the Committee by seeking evidence by obtaining â€"" ,,,,

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;" ,,,,

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;,,,,

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;,,,,

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board," ,,,,

which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be," ,,,,

the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on" ,,,,

lower side within the margin of one year, and while passing orders in such case shall, after taking into consideration such evidence as may be" ,,,,

available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses" ,,,,

(a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.â€",,,,

(emphasis supplied),,,,

13. It is evident from a perusal of the above that if any Court, including this Court, is of the opinion that an accused person was a juvenile on the date" ,,,,

of commission of the offence, or if a claim of juvenility is raised before it, the Court must conduct an inquiry regarding the determination of the age of" ,,,,

the accused. The evidence collected by way of such inquiry, as is specified in clauses (a)(i), (ii), and (iii) of Rule 12(3), or in the absence whereof," ,,,,

clause (b) of the same, is treated as conclusive proof of the age of the accused. In such a situation, it would be clear that such an inquiry conducted by" ,,,,

this Court would be given precedence over a view of the age of the accused taken by the High Court. It is relevant to note here itself that in this case," ,,,,

the High Court decided the issue merely upon an assessment of the material on record without resorting to the procedure governing inquiries for the," ,,,,

determination of age as laid out in Section 7A of the 2000 Act and Rule 12 of the 2007 Rules.," ,,,,

14. At this point, it is necessary to briefly discuss the findings of the High Court in the impugned judgment regarding the age of the accused to" ,,,,

underscore that it has not conducted the inquiry stipulated as per Section 7A and Rule 12. Before the High Court, the Appellant submitted a report of" ,,,,

the Assistant Commissioner of Police, Bhondsi, Gurgaon to the effect that his date of birth was 12.07.1984, thereby claiming the benefit of the 2000" ,,,,

Act. This plea was rejected on the grounds of failure to raise the plea of juvenility before the Trial court; non-Âproduction of birth certificate in spite of," ,,,,

an opportunity being granted to do so; absence of the Appellantâ€™s name in the birth register dated 12.07.1984 and for the years 1983-84 and," ,,,,

1984-85; non-Âcorroboration of the date of birth certificates issued by schools attended by the Appellant through other documentary evidence; non-Â," ,,,,

matching of the name on such certificates (Raj Kumar) with the name of the Appellant as brought on record (Raju); and non-Âcorroboration of the," ,,,,

address of the Appellant through such certificates, which simply stated that the date of birth of the student named Raj Kumar was 12.07.1984." ,,,,

15. The High Court evidently did not even frame its discussion in terms of whether the evidence brought on record was sufficient to conduct an," ,,,,

inquiry under the 2000 Act and the 2007 Rules, let alone order and conduct such an inquiry. On the contrary, it simply recorded that the evidence did" ,,,,

not go to show that the Appellant was a juvenile at the time of the commission of the offence, and proceeded to affirm the conviction of the Appellant" ,,,,

on merits.," ,,,,

16. Therefore, it is evident that the only inquiry as stipulated under the 2000 Act and the 2007 Rules was conducted by the Registrar (Judicial) upon",,,,,
the directions of this Court, after the Court was satisfied upon going through the school certificates adduced by the Appellant that the certificates in",,,,,
question prima facie entitled him to claim the conduct of such an inquiry. In such a situation, the question regarding whether precedence may be given",,,,,
to the inquiry of a Registrar (Judicial) of this Court over the opinion of the High Court regarding the age of an accused can be restated as whether,,,,,
such inquiry conducted by the Registrar (Judicial) upon the direction of this Court, if thereafter affirmed by this Court, would amount to an inquiry",,,,,
conducted by this Court itself. If this be the case, the findings of such inquiry would prevail over the view taken by the High Court, as is evident from",,,,,
the preceding discussion.,,,,,

17. We are of the opinion that the above question must be answered in the affirmative. This Court, on previous occasions as well, has adopted the",,,,,
practice of directing the Registrar (Judicial) to conduct the inquiry in terms of Rule 12 of the 2007 Rules on behalf of this Court, and accepted the",,,,,
findings made therein (see Dharambir v. State (NCT) of Delhi, (supra). Seeing that the Registrar (Judicial) is a District Judge serving on deputation at",,,,,
the Supreme Court, recourse to his or her assistance in the form of collecting evidence and arriving at a finding regarding the claim of juvenility of the",,,,,
person concerned may be undertaken by this Court in order to save its judicial time. However, it must be stressed that the findings in an inquiry",,,,,
conducted by the Registrar (Judicial) would not per se prevail upon a contrary view taken by the High Court. Only after this Court applies its judicial,,,,,
mind to such report with due regard to the confines of the procedure stipulated in Section 7A of the 2000 Act and Rule 12 of the 2007 Rules, and only",,,,,
if it thereafter confirms the findings in such report would the same prevail upon a contrary view taken by the High Court which is not based upon any,,,,,
such inquiry.,,,,,

18. We may now undertake to consider the findings in the report submitted by the Registrar (Judicial). As already noted, as per the report, the age of",,,,,
the Appellant was 16 years, 2 months and 2 days at the time of commission of the offence and he was thus a juvenile at that time. In the said report,",,,,

the learned Registrar referred to the original Transfer Certificate in Hindi issued by the Headmaster, Dayanand Arya Middle School, Sohna dated",,,,,

24.03.2012 and the Transfer Certificate issued by the Principal, Government Senior Secondary School (Boys), Sohna dated 12.12.2000. These",,,,,

certificates contain the official seal of the respective schools and the signatures of the respective authorities, and state the name of the student as Raj",,,,,

Kumar, son of Rajendar Singh, and record his date of birth as 12.07.1984. A certificate dated 07.12.2010 was also issued by the Principal of the",,,,,

Government Senior Secondary School (Boys), Sohna, verifying that the student named Raj Kumar, son of Rajendar Singh, used to study at the school,",,,,

and that the school records reflected his date of birth as 12.07.1984 and the name of his mother as Smt. Sarla Devi.,,,,,

19. The learned Registrar also duly corroborated the contents of these certificates by referring to other school records and also examined witnesses.,,,,,

With respect to the Dayanand Arya Middle School, Sohna, the learned Registrar examined Mr. Suresh Chand, Teacher, appearing under the",,,,,

directions of the School Headmaster, who confirmed that the Transfer Certificate dated 24.03.2012 was bona fide and issued under the signature of",,,,,

the then Principal. The Registrar also verified the certificate by comparing it with the office copy of the same in the School Leaving Certificate,,,,,

S. No.,"Admission

No.,"Date of Admission,"Date of Striking Off,"Reasons for

Striking Off

the Name

1.,14163,7.5.1996 (in Class VI),"19.4.1997

(in Class VII),"NonÂpayment

of School Funds

2.,14678,"17.5.1997 (in Class

VII),"March 1999 (in

Class VIII),"Failed in

Class VIII

Board

Examination

3.,15546,"7.7.1999 (in
Class VIII)","7.8.1999 (in
Class VIII)","Continued
absence